

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN**

MICHAEL J. VIEZBICKE,

Petitioner,

v.

WILLIAM POLLARD,

Respondent.

Case No. 18-CV-1430-JPS

**ORDER**

On September 12, 2018, Petitioner filed a writ of habeas corpus pursuant to 28 U.S.C. § 2254, in which he alleges four grounds of relief. (Docket #1). Petitioner is currently serving a five-year prison sentence on a no-contest plea for violations of Wisconsin state law.<sup>1</sup>

Petitioners are required to exhaust state court remedies before they can seek federal habeas relief. 28 U.S.C. § 2254(b)(1)(A), (c). Magistrate Judge David E. Jones, who screened the petition, noted that Petitioner's appeal is currently pending before the Wisconsin Court of Appeals, District II. (Docket #6). Because Petitioner's appeal is still pending in state court, he has not exhausted his state court remedies on any of the grounds raised in his habeas petition. *Id.* at 3.

Magistrate Jones also determined that Petitioner was not entitled to a certificate of appealability because Petitioner failed to make a "substantial showing of the denial of a constitutional right," 28 U.S.C. § 2253(c)(2); no reasonable jurist would find it debatable whether the petition states a valid

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<sup>1</sup>Petitioner is now incarcerated in Dodge Correctional Institution, rather than Ozaukee County Jail. The Court has substituted the warden of that prison, William Pollard, as the Respondent in this case in place of Sheriff Jim Johnson.

claim of the denial of a constitutional right. *See Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

In his response, Petitioner agreed with Magistrate Jones' applications and conclusions of law and stated that "dismissal of the action is mutually agreeable." (Docket #7 at 2).

Accordingly,

**IT IS ORDERED** that Magistrate Judge David E. Jones' November 7, 2018 Report and Recommendation (Docket #6) be and the same is hereby **ADOPTED**;


**IT IS FURTHER ORDERED** that a certificate of appealability be and the same is hereby **DENIED**; and

**IT IS FURTHER ORDERED** that this action be and the same is hereby **DISMISSED without prejudice**.

The Clerk of the Court is directed to enter judgment accordingly.

Dated at Milwaukee, Wisconsin, this 21st day of November, 2018.

BY THE COURT:

  
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J. P. Stadtmueller  
U.S. District Judge